

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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IN RE GOLDEN	Case No.
Debtor.	16-40809 (ESS)

-----x Chapter 7

TASHANNA B. GOLDEN Adv. Pro. No.
f/k/a TASHANNA B. PEARSON on 1-1701005
behalf of herself and all other
similarly situated,

Plaintiffs,

VS.

NATIONAL COLLEGIATE STUDENT LOAN
TRUST 2005-3, NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2006-4, GS2 2016-A,
PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY d/b/a AMERICAN
EDUCATION SERVICES, FIRSTMARK SERVICES,
Defendants.

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VIDEOTAPED DEPOSITION of RICHARD B. NEELY

Boston, Massachusetts

Reporter: MaryJo O'Connor, RMR, CSR

Job No. 477162

<p style="text-align: right;">Page 30</p> <p>1 R. Neely</p> <p>2 A. Correct.</p> <p>3 Q. And TERI was not entitled to any</p> <p>4 financial assistance from the U.S. Department</p> <p>5 of Education for its guarantees; is that</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Each loan that TERI guaranteed was</p> <p>9 funded by a participating private financial</p> <p>10 institution; is that fair to state?</p> <p>11 A. Correct.</p> <p>12 Q. And TERI did not guarantee federal</p> <p>13 loans?</p> <p>14 A. Correct.</p> <p>15 Q. Did TERI ever fund any of the</p> <p>16 loans that were made to the student borrowers?</p> <p>17 A. Help me understand that question</p> <p>18 again? Or repeat it at least?</p> <p>19 Q. Did TERI ever advance the loan</p> <p>20 funds to the borrowers?</p> <p>21 A. No.</p> <p>22 Q. And when I refer to the term</p> <p>23 "funded," you've been involved in the student</p> <p>24 loan business for a long time, what does that</p> <p>25 mean? If I say did TERI fund a loan, what does</p>	<p style="text-align: right;">Page 31</p> <p>1 R. Neely</p> <p>2 that mean to you?</p> <p>3 A. Well, that's not exactly a clear</p> <p>4 question, or clear term.</p> <p>5 Q. What does it mean to originate a</p> <p>6 student loan?</p> <p>7 A. To originate the student loan</p> <p>8 involves a process that involves underwriting</p> <p>9 as well as disbursement.</p> <p>10 Q. Did TERI ever underwrite any</p> <p>11 student loans?</p> <p>12 A. TERI acted as a loan servicer on</p> <p>13 behalf of the funding source, the lenders.</p> <p>14 Q. Going back to my question of</p> <p>15 whether or not TERI ever funded loans, did TERI</p> <p>16 ever act as the funding source for the loans to</p> <p>17 the student borrowers?</p> <p>18 A. TERI was not a source of funds.</p> <p>19 TERI was a disbursement agent on behalf of</p> <p>20 lenders.</p> <p>21 Q. But the disbursements of money</p> <p>22 that were made to the student borrowers as</p> <p>23 loans wasn't, I guess you could say, TERI's</p> <p>24 money; it was the bank's money.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 32</p> <p>1 R. Neely</p> <p>2 Q. And TERI was simply acting as a</p> <p>3 disbursing agent; is that what you said?</p> <p>4 A. Yes.</p> <p>5 Q. Did TERI ever own any loans,</p> <p>6 student loans?</p> <p>7 A. TERI's affiliate, an affiliated</p> <p>8 entity of TERI, did purchase loans from at</p> <p>9 least one bank and possibly there was a mixed</p> <p>10 portfolio. So there was a TERI affiliate that</p> <p>11 did purchase loans.</p> <p>12 Q. What was the name of the</p> <p>13 affiliate?</p> <p>14 A. TERI Financial Services, Inc.</p> <p>15 Q. Was TERI Financial Services, Inc.,</p> <p>16 a not-for-profit corporation?</p> <p>17 A. Yes.</p> <p>18 Q. And was TERI Financial Services,</p> <p>19 Inc., owned by TERI itself like as a</p> <p>20 wholly-owned subsidiary?</p> <p>21 A. No. It was a nonprofit affiliate.</p> <p>22 Q. And you mentioned that TERI also</p> <p>23 serviced loans. Did I get that correct?</p> <p>24 A. Well, you used the term "service"</p> <p>25 to describe the origination process. So the</p>	<p style="text-align: right;">Page 33</p> <p>1 R. Neely</p> <p>2 lenders, for example, originated loans and did</p> <p>3 all of the work themselves, including the</p> <p>4 underwriting and disbursement. And in later</p> <p>5 years, TERI itself took over the underwriting</p> <p>6 service, if you will, the loan origination</p> <p>7 service, and did the origination service and</p> <p>8 disbursement.</p> <p>9 Q. And was that after 2001, which you</p> <p>10 were just mentioning when TERI took over the</p> <p>11 underwriting and loan disbursement itself, or</p> <p>12 was it before the transaction with FMC, First</p> <p>13 Marblehead?</p> <p>14 A. Before that transaction.</p> <p>15 Q. Are you familiar with the term</p> <p>16 "loan-related assets"?</p> <p>17 A. I would ask you to define that.</p> <p>18 Q. You mentioned that an affiliate of</p> <p>19 TERI owned some loans. TERI itself never owned</p> <p>20 any loans.</p> <p>21 A. Correct. Let me -- you need to</p> <p>22 clarify that, because in the legal world a</p> <p>23 defaulted loan essentially became the property</p> <p>24 of TERI. So if TERI paid a claim, TERI</p> <p>25 effectively had that loan. So I guess</p>

<p style="text-align: right;">Page 34</p> <p>1 R. Neely</p> <p>2 that's -- I guess on a legal definition of</p> <p>3 whether TERI is the legal owner of that loan,</p> <p>4 if they paid the default, they had the right to</p> <p>5 collect on that default.</p> <p>6 Q. Did TERI ever have title to the</p> <p>7 promissory notes that represented the loans to</p> <p>8 those student borrowers?</p> <p>9 A. I believe after default, you could</p> <p>10 legally say that they owned the promissory</p> <p>11 note.</p> <p>12 Q. Such that TERI could then pursue</p> <p>13 the defaulting borrowers for the money after</p> <p>14 you paid the guarantee, after TERI paid the</p> <p>15 guarantee?</p> <p>16 A. Correct.</p> <p>17 Q. So prior to 2001, what type of</p> <p>18 administrative operations did TERI have?</p> <p>19 A. They had the loan origination</p> <p>20 group, they had a recovery group, they had a</p> <p>21 finance group, they had the higher education</p> <p>22 and information center. That's really the gist</p> <p>23 of it.</p> <p>24 Q. And all told, how many employees</p> <p>25 did TERI have, approximately, up to 2001?</p>	<p style="text-align: right;">Page 35</p> <p>1 R. Neely</p> <p>2 A. I would say to the best of my</p> <p>3 recollection, and this is going back 20 years</p> <p>4 now, I would guess 200.</p> <p>5 Q. And I think you said the office</p> <p>6 location was at 330 Stuart Street here in</p> <p>7 Boston?</p> <p>8 A. In 1997 it was.</p> <p>9 Q. Okay. Did the office location</p> <p>10 change?</p> <p>11 A. Yes.</p> <p>12 Q. To 31 James Street?</p> <p>13 A. Saint James. Saint James Avenue.</p> <p>14 Q. Saint James. And it changed when,</p> <p>15 I'm sorry?</p> <p>16 A. Well, I was not with TERI when it</p> <p>17 changed, so I would have to -- I can</p> <p>18 approximate. I'll give you an approximate</p> <p>19 period of time. It may have come over to</p> <p>20 31 Saint James Avenue in 2003 approximately.</p> <p>21 Don't hold me to that date.</p> <p>22 Q. When TERI came over to 31 Saint</p> <p>23 James Street, was First Marblehead also working</p> <p>24 out of 31 Saint James Street?</p> <p>25 A. FMER was working out of 31 Saint</p>
<p style="text-align: right;">Page 36</p> <p>1 R. Neely</p> <p>2 James, not First Marblehead.</p> <p>3 Q. First Marblehead Education</p> <p>4 Resources?</p> <p>5 A. Correct.</p> <p>6 Q. Where was the office of First</p> <p>7 Marblehead itself, the parent company?</p> <p>8 A. In what year?</p> <p>9 Q. In 2003. When TERI came over.</p> <p>10 A. In 2003 The First Marblehead</p> <p>11 Corporation was in the Prudential Center, 800</p> <p>12 Boylston Street.</p> <p>13 Q. Where did you go to work, Boylston</p> <p>14 Street for Saint James?</p> <p>15 A. Saint James.</p> <p>16 Q. And when in 2003 TERI came over to</p> <p>17 31 Saint James Street, was First -- let me</p> <p>18 rephrase that.</p> <p>19 In 2003 when TERI came over to</p> <p>20 31 Saint James Street, was FMER already located</p> <p>21 at 31 Saint James Street?</p> <p>22 A. Saint James Avenue. Yes.</p> <p>23 Q. Saint James Avenue.</p> <p>24 A. Yes.</p> <p>25 Q. So the employees from TERI came to</p>	<p style="text-align: right;">Page 37</p> <p>1 R. Neely</p> <p>2 work in the same office as FMER?</p> <p>3 A. They came to work in the same</p> <p>4 building.</p> <p>5 Q. Between 2001 and 2008, was TERI</p> <p>6 working at 31 Saint James Avenue?</p> <p>7 A. Yes. Well, I think I told you it</p> <p>8 was 2003 to 2008.</p> <p>9 Q. 2003. Thank you, sir.</p> <p>10 Did TERI and FMER ever share</p> <p>11 office space?</p> <p>12 A. TERI was on the same floor as FMER</p> <p>13 initially when they came over, and later moved</p> <p>14 to another floor in the building.</p> <p>15 Q. When TERI came over in 2003 to</p> <p>16 31 Saint James Avenue, did it have a separate</p> <p>17 lease for the office space?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you know whether or not there</p> <p>20 was any type of sublease between FMER and TERI</p> <p>21 in 2003?</p> <p>22 A. There may have been.</p> <p>23 Q. Do you know to whom TERI was</p> <p>24 paying rent for its space at 31 Saint James</p> <p>25 Avenue when it came over in 2003?</p>

<p style="text-align: right;">Page 38</p> <p>1 R. Neely</p> <p>2 A. Well, as I answered a minute ago,</p> <p>3 I'm not entirely sure that there was a</p> <p>4 sublease.</p> <p>5 Q. Were you in your role as -- by the</p> <p>6 way, you were working for FMER as of 2003,</p> <p>7 correct?</p> <p>8 A. I started working for FMER in July</p> <p>9 of 2001.</p> <p>10 Q. And, incidentally, was your</p> <p>11 transition from TERI to FMER in any way related</p> <p>12 to your transaction between TERI and First</p> <p>13 Marblehead that took place in 2001?</p> <p>14 A. Yes.</p> <p>15 Q. How so?</p> <p>16 A. I was part of 150 some odd folks</p> <p>17 that were essentially sold as part of an asset</p> <p>18 valuation from TERI to First Marblehead</p> <p>19 Education Resources.</p> <p>20 Q. Okay, we'll come back to that in a</p> <p>21 second.</p> <p>22 Did TERI ever fund any what we</p> <p>23 call loan programs?</p> <p>24 A. I do not understand the question.</p> <p>25 Q. When we use the term "loan</p>	<p style="text-align: right;">Page 39</p> <p>1 R. Neely</p> <p>2 program," what is that?</p> <p>3 A. Loan program is a very broad term.</p> <p>4 Q. I understand. Would it be simple</p> <p>5 to say that a loan program was an agreement</p> <p>6 between TERI and a bank related to the private</p> <p>7 student education loans that the bank is</p> <p>8 making?</p> <p>9 A. That could be one definition for</p> <p>10 that term.</p> <p>11 Q. What are the other definitions of</p> <p>12 that term?</p> <p>13 A. Loan program might describe</p> <p>14 whether it's an undergraduate or graduate type</p> <p>15 of program. It might describe whether it was a</p> <p>16 subject matter program, such as a law school</p> <p>17 program or a medical school program. So it</p> <p>18 could be a subject matter description. It</p> <p>19 could be a level of education description.</p> <p>20 Q. Am I correct to state, though,</p> <p>21 that TERI did have agreements with banks?</p> <p>22 A. Yes.</p> <p>23 Q. And those agreements were related</p> <p>24 to the loan programs that the banks had to lend</p> <p>25 money to student borrowers?</p>
<p style="text-align: right;">Page 40</p> <p>1 R. Neely</p> <p>2 A. Yes.</p> <p>3 Q. And those agreements essentially</p> <p>4 governed what TERI's role was with respect to</p> <p>5 the loans that the banks were making?</p> <p>6 A. Yes.</p> <p>7 Q. And with respect to those loan</p> <p>8 programs, the agreements between TERI and the</p> <p>9 banks, did TERI ever provide any funds or money</p> <p>10 to the banks to help the banks, for example,</p> <p>11 market their loans?</p> <p>12 A. TERI did not provide any capital</p> <p>13 to banks.</p> <p>14 Q. Did TERI ever pay any, I guess you</p> <p>15 could say, processing fees to banks?</p> <p>16 A. Not that I can think of in my</p> <p>17 period of time there. So I'm limiting my</p> <p>18 experience from 1997 to 2001.</p> <p>19 Q. That's fine. Between 1997 and</p> <p>20 2001, did TERI ever pay any marketing fees to</p> <p>21 the banks for the banks to market their loans?</p> <p>22 A. Not to my knowledge or</p> <p>23 recollection.</p> <p>24 Q. Did TERI ever provide any fees to</p> <p>25 the banks for the banks to originate the loans</p>	<p style="text-align: right;">Page 41</p> <p>1 R. Neely</p> <p>2 under the loan programs?</p> <p>3 A. Not to my knowledge.</p> <p>4 MR. CASAMENTO: And that's all</p> <p>5 between 1997 and 2001.</p> <p>6 MR. FREIBERG: Certainly.</p> <p>7 Q. Between 1997 and 2001, did TERI</p> <p>8 ever provide any funds to the banks for the</p> <p>9 banks to service their loans?</p> <p>10 A. No.</p> <p>11 Q. And between 1997 and 2001 did TERI</p> <p>12 ever provide any money to the banks to assist</p> <p>13 the bank's collecting on those loans?</p> <p>14 A. No.</p> <p>15 Q. Is it fair to state that there was</p> <p>16 never any money that TERI paid to the banks?</p> <p>17 MR. CASAMENTO: Objection. Can</p> <p>18 you define the time period that you're</p> <p>19 asking the question?</p> <p>20 Q. Between 1997 and 2001, to your</p> <p>21 knowledge did TERI ever pay money to the banks</p> <p>22 for any reason?</p> <p>23 A. They paid money as a default. So</p> <p>24 a bank would be reimbursed for a default on a</p> <p>25 guaranteed loan.</p>

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1 R. Neely
2 get right to this.
3 BY MR. FREIBERG:
4 Q. In 2001 TERI transferred
5 substantially all of its loan-related assets
6 and administrative operations to First
7 Marblehead Corporation, correct?
8 A. Correct.
9 Q. This was essentially a purchase
10 and sale transaction by which First Marblehead
11 or FMER purchased what from TERI?
12 A. This was an asset purchase, and
13 there were three major elements: one was
14 people, one was data, and one was software.
15 Q. And why did TERI enter into this
16 relationship with First Marblehead?
17 A. It started as a partnership that
18 would result in the ability to expand loan
19 programs, provide funds for TERI.
20 Q. Was it considered a strategic
21 partnership between TERI and First Marblehead?
22 A. You'd have to define for me what
23 you mean by "strategic partnership."
24 Q. Strike the question "strategic."
25 Was it considered somewhat of a

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1 R. Neely
2 two people that were marketing.
3 Q. The marketing personnel?
4 A. The one or two people were part of
5 the 150 that moved over.
6 Q. And did TERI sell its claims
7 management personnel or division to First
8 Marblehead?
9 A. The staff were part of the
10 transfer.
11 Q. How did TERI benefit from the
12 transaction with First Marblehead?
13 A. TERI received substantial funding
14 and it received new partnerships, new lender
15 partnerships.
16 Q. New lender partnerships with
17 banks?
18 A. Correct.
19 Q. And how did First Marblehead
20 benefit from the transaction?
21 A. First Marblehead was able to get
22 the loan origination service and access to the
23 data in terms of TERI's history. So First
24 Marblehead received all of the default data and
25 information on borrowers that had applied since

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1 R. Neely
2 partnership between TERI and First Marblehead?
3 MR. FIALKOW: Objection. You can
4 answer if you understand.
5 A. Yeah, I mean, it's certainly in
6 terms of it's not a legal partnership, but it
7 was certainly a business partnership, if you
8 will.
9 Q. And TERI essentially outsourced
10 all of its origination staff support and
11 administrative functions to First Marblehead?
12 A. Yes.
13 Q. And did TERI sell its operating
14 divisions that were performing loan
15 underwriting to First Marblehead?
16 A. Yes.
17 Q. Did TERI sell to First Marblehead
18 its operating division that was responsible for
19 originating student loans?
20 A. Yes.
21 Q. Did TERI sell to First Marblehead
22 its marketing division?
23 A. One or two people that were
24 marketing, I wasn't given any credit for a
25 division. It wasn't a division. It was one or

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1 R. Neely
2 1985.
3 Q. And did First Marblehead pay any
4 cash to TERI in connection with the
5 transaction?
6 A. It was value exchanged. I've got
7 to remember, that it was a monthly payment that
8 took place for -- it was at one level for 60
9 months cash payment, and that payment continued
10 for another 60 months, or it was supposed to,
11 prior to the bankruptcy, continue at a lesser
12 amount. And I have to think back in terms
13 of -- I have to go back and look at the
14 document.
15 Q. If I understand it correctly,
16 there was a cash component paid to TERI and
17 also TERI issued one or more promissory notes
18 to First Marblehead.
19 A. That's the reference I made to the
20 document where there was 60 monthly payments
21 followed by a subsequent 60 monthly payments.
22 That's the promissory notes. I haven't looked
23 at those documents in a long time, so...
24 Q. I understand. Did TERI satisfy
25 those promissory notes payable to First

<p style="text-align: right;">Page 86</p> <p>1 R. Neely</p> <p>2 Marblehead?</p> <p>3 A. The first one, the final payments</p> <p>4 were not completed due to the bankruptcy.</p> <p>5 Q. And did TERI pay interest on those</p> <p>6 promissory notes to First Marblehead?</p> <p>7 A. There was -- I think it was part</p> <p>8 of the note calculated amount. It was part of</p> <p>9 the amortization schedule.</p> <p>10 Q. And do you recall what the amount</p> <p>11 of the loan was?</p> <p>12 A. No.</p> <p>13 Q. I saw somewhere approximately</p> <p>14 \$7.9 million between TERI and --</p> <p>15 A. I haven't looked at any documents</p> <p>16 in a long, long time.</p> <p>17 Q. What role in -- well, strike that</p> <p>18 question.</p> <p>19 When the transaction was first</p> <p>20 discussed, first started to be discussed</p> <p>21 between TERI and First Marblehead, what role</p> <p>22 did TERI have in the securitization of student</p> <p>23 loans, or what was discussed?</p> <p>24 A. What role did TERI have? TERI was</p> <p>25 not securing -- with the exception of TERI</p>	<p style="text-align: right;">Page 87</p> <p>1 R. Neely</p> <p>2 Financial Services, Inc., TERI was not</p> <p>3 securitizing loans.</p> <p>4 Q. What role did TERI's guarantee of</p> <p>5 student loans have in the securitization that</p> <p>6 started after 2001?</p> <p>7 A. I'm not sure I understand the</p> <p>8 question.</p> <p>9 Q. I'll come back to it in a minute.</p> <p>10 Do you recall an agreement between</p> <p>11 TERI and First Marblehead known as the Master</p> <p>12 Loan Guarantee Agreement?</p> <p>13 A. Yes.</p> <p>14 Q. And this agreement established the</p> <p>15 terms pursuant to which TERI would guarantee</p> <p>16 student loans; is that correct?</p> <p>17 A. Yeah, I'm familiar with the</p> <p>18 document, but I have not looked at the document</p> <p>19 in 20 years or 19 years.</p> <p>20 Q. And there was also a servicing</p> <p>21 agreement between TERI and FMER, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And I may have asked you this</p> <p>24 earlier, but is FMER a wholly-owned subsidiary</p> <p>25 of The First Marblehead Corporation?</p>
<p style="text-align: right;">Page 88</p> <p>1 R. Neely</p> <p>2 A. Yes.</p> <p>3 Q. And the master servicing agreement</p> <p>4 covered day-to-day operations of TERI by which</p> <p>5 FMC, I'm sorry, FMER was essentially doing</p> <p>6 day-to-day operations of TERI --</p> <p>7 A. Yes.</p> <p>8 Q. -- is that fair to say?</p> <p>9 A. That's correct.</p> <p>10 Q. And then TERI reimbursed FMER for</p> <p>11 its costs of FMER to administer the day-to-day</p> <p>12 operations of TERI?</p> <p>13 A. Yes.</p> <p>14 Q. And there was also a database sale</p> <p>15 and supplementation agreement, is that what you</p> <p>16 were referring to earlier about the purchase of</p> <p>17 the data?</p> <p>18 A. Yes.</p> <p>19 Q. And did that give the rights --</p> <p>20 give a right of First Marblehead to have access</p> <p>21 to the data that TERI had gathered over the</p> <p>22 years?</p> <p>23 A. Yes.</p> <p>24 Q. Then there was a marketing</p> <p>25 services agreement between TERI and FMER. Do</p>	<p style="text-align: right;">Page 89</p> <p>1 R. Neely</p> <p>2 you recall that?</p> <p>3 A. Yes.</p> <p>4 Q. Did that provide for First</p> <p>5 Marblehead to perform the marketing-related</p> <p>6 services for the TERI-guaranteed loans?</p> <p>7 A. Can you -- I'm not sure...</p> <p>8 Q. Sure. Maybe you could just tell</p> <p>9 me to your recollection what did the marketing</p> <p>10 agreement between TERI and FMER, what did that</p> <p>11 cover?</p> <p>12 A. Yeah, I don't recall the details.</p> <p>13 It was a partnership, a business partnership,</p> <p>14 on how the marketing was going to be done.</p> <p>15 Q. A business partnership between</p> <p>16 FMER and TERI about how the marketing -- how</p> <p>17 TERI would do the marketing?</p> <p>18 A. Or how marketing was going to be</p> <p>19 done in general.</p> <p>20 Q. Did the Master Loan Guarantee</p> <p>21 Agreement grant TERI a right of first refusal</p> <p>22 to provide loan guarantees to third-party</p> <p>23 lenders?</p> <p>24 A. I don't recall.</p> <p>25 Q. Did the master loan -- maybe you</p>

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<p>1 R. Neely</p> <p>2 could tell me what did the Master Loan</p> <p>3 Guarantee Agreement do? I understand you</p> <p>4 haven't read it in a while.</p> <p>5 A. Yeah, it was a template as I</p> <p>6 recall. It was a template that would be -- it</p> <p>7 was out there just as an overall document.</p> <p>8 Q. The loans that -- I'm going to</p> <p>9 jump ahead a little bit here -- that First</p> <p>10 Marblehead Corporation securitized, were all of</p> <p>11 those loans guaranteed by TERI?</p> <p>12 A. No.</p> <p>13 Q. Were most of them guaranteed by</p> <p>14 TERI?</p> <p>15 A. I'm not sure what the definition</p> <p>16 of "most" is.</p> <p>17 Q. I'll come back to that in a</p> <p>18 minute.</p> <p>19 Was there something known as the</p> <p>20 Deposit and Security Agreement?</p> <p>21 A. Yes.</p> <p>22 Q. And what was that, between TERI</p> <p>23 and the bank -- excuse me -- between First</p> <p>24 Marblehead and the banks?</p> <p>25 A. There was a deposit and service</p>	<p>1 R. Neely</p> <p>2 agreement. I'd have to sit back a while and</p> <p>3 remember who the parties were, but that</p> <p>4 agreement covered the receipt and collection of</p> <p>5 the funds.</p> <p>6 Q. The guarantee funds?</p> <p>7 A. Correct.</p> <p>8 Q. The Deposit and Security</p> <p>9 Agreement, is that what created the pledged</p> <p>10 accounts that we were talking about earlier as</p> <p>11 far as you can recall?</p> <p>12 A. As far as I recall, I believe</p> <p>13 that's correct.</p> <p>14 Q. Did the Master Loan Guarantee</p> <p>15 Agreement allow TERI to retain a portion of the</p> <p>16 guarantee fees that it earned?</p> <p>17 A. Yes. That's the administrative</p> <p>18 portion I referred to earlier today, out of the</p> <p>19 split.</p> <p>20 Q. What happened to the other portion</p> <p>21 of the guarantee fees?</p> <p>22 A. Deposited in a segregated fund.</p> <p>23 Q. Did the master service -- excuse</p> <p>24 me -- the Master Loan Guarantee Agreement grant</p> <p>25 TERI a beneficial interest to TERI for a</p>
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<p>1 R. Neely</p> <p>2 portion of the residual value of the</p> <p>3 securitization trust that purchased the loans</p> <p>4 guaranteed by TERI?</p> <p>5 A. I do recall that TERI had an</p> <p>6 interest. Whether it was that document or</p> <p>7 another document, but I do recall that TERI was</p> <p>8 granted an interest in the residuals.</p> <p>9 Q. First of all, do you recall what</p> <p>10 the interest was that TERI was granted?</p> <p>11 A. My recollection is the original</p> <p>12 percentage was 25 percent.</p> <p>13 Q. And the interest that TERI was</p> <p>14 granted, by whom was it granted?</p> <p>15 A. Who was the 25 percent granted by?</p> <p>16 Q. Yes.</p> <p>17 A. The other party, First Marblehead.</p> <p>18 Q. First Marblehead granted a</p> <p>19 25 interest -- percent interest in the residual</p> <p>20 value of the securitized trust to TERI?</p> <p>21 A. Correct.</p> <p>22 Q. And when you say "residual value,"</p> <p>23 what do you mean? Or what did it mean?</p> <p>24 A. I would ask the legal authorities</p> <p>25 to describe the residual interest.</p>	<p>1 R. Neely</p> <p>2 MR. FIALKOW: Don't offer any</p> <p>3 legal opinions or anything like that.</p> <p>4 Q. Fair response.</p> <p>5 What did you understand the</p> <p>6 residual interest to mean?</p> <p>7 A. Residual interest in my mind,</p> <p>8 personally speaking, is the excess of any funds</p> <p>9 left over in a trust after the payment of all</p> <p>10 of the bondholders, service providers, service</p> <p>11 organizations, trustees. It's the remnants of</p> <p>12 whatever might be left, may be left, if any.</p> <p>13 Q. And so part of the transaction</p> <p>14 between TERI and First Marblehead was that at</p> <p>15 the end of the day -- at the end of the trusts</p> <p>16 TERI would have a 25 percent interest in</p> <p>17 whatever was left over?</p> <p>18 A. If any.</p> <p>19 Q. If any. Okay.</p> <p>20 Does that residual interest still</p> <p>21 exist?</p> <p>22 A. I wouldn't know.</p> <p>23 Q. And was that residual interest</p> <p>24 that TERI was granted by First Marblehead only</p> <p>25 for the trusts that were created by the</p>

<p style="text-align: right;">Page 94</p> <p>1 R. Neely</p> <p>2 National Collegiate Student Loan Trusts?</p> <p>3 A. That's correct. My understanding.</p> <p>4 My recollection.</p> <p>5 Q. Did TERI have a 25 percent</p> <p>6 interest in the residual, the remnants, of all</p> <p>7 trusts that were NCSLT trusts?</p> <p>8 A. NCSLT trusts were strictly TERI</p> <p>9 trusts.</p> <p>10 Q. What do you mean by that?</p> <p>11 A. As I said to you earlier in answer</p> <p>12 to your question about most, I said define</p> <p>13 most. First Marblehead had securitized</p> <p>14 non-TERI-guaranteed loans. TERI received, in</p> <p>15 that agreement you referred to, a 25 percent</p> <p>16 interest only in trusts where there were -- the</p> <p>17 NCSLT trusts that had TERI-guaranteed loans in</p> <p>18 it. TERI did not have an interest in</p> <p>19 non-TERI-guaranteed securitizations.</p> <p>20 Q. Were there other securitization --</p> <p>21 excuse me -- other securitized trusts that were</p> <p>22 not NCSLT trusts that First Marblehead owned?</p> <p>23 A. I think I just answered that.</p> <p>24 Q. Were there trusts that First</p> <p>25 Marblehead was involved with that were not</p>	<p style="text-align: right;">Page 95</p> <p>1 R. Neely</p> <p>2 NCSLT trusts?</p> <p>3 A. Yes. I answered that there were</p> <p>4 non-TERI securitizations.</p> <p>5 Q. Okay. Maybe I'm confused here.</p> <p>6 Did TERI guarantee all of the NCSLT -- strike</p> <p>7 the question.</p> <p>8 Did TERI guarantee all of the</p> <p>9 student loans that ended up being part of the</p> <p>10 NCSLT trusts?</p> <p>11 A. To my recollection, they did.</p> <p>12 Q. And what you're saying is that</p> <p>13 there were other trusts?</p> <p>14 A. Not TERI guaranteed and did not</p> <p>15 have a 25 percent interest to TERI.</p> <p>16 Q. How many NCSLT trusts were there?</p> <p>17 A. My recollection is there were 15</p> <p>18 or 16.</p> <p>19 Q. What was the relationship between</p> <p>20 First Marblehead and NCT? Or the entity that</p> <p>21 created the NCSLT trusts.</p> <p>22 A. Yeah, I don't have the precise</p> <p>23 legal definition of that.</p> <p>24 Q. Was National Collegiate Trust an</p> <p>25 affiliate of First Marblehead?</p>
<p style="text-align: right;">Page 96</p> <p>1 R. Neely</p> <p>2 A. There was a legal relationship of</p> <p>3 some type that I'm not this second able to</p> <p>4 precisely define.</p> <p>5 Q. Did First Marblehead own National</p> <p>6 Collegiate Trust?</p> <p>7 A. That's the part I'm not legally</p> <p>8 defining.</p> <p>9 Q. Were you at all involved in the</p> <p>10 preparation of any SEC filings for First</p> <p>11 Marblehead?</p> <p>12 A. Yes.</p> <p>13 Q. Were you at all involved in</p> <p>14 preparation of the prospectuses, prospecti I</p> <p>15 guess it is, for the NCT trusts?</p> <p>16 A. NCT or NCSLT?</p> <p>17 Q. NCSLT, excuse me. I keep saying</p> <p>18 NCT. One in the same.</p> <p>19 A. Yes, I assisted in the collection</p> <p>20 of information.</p> <p>21 Q. Do you recall, sir, TERI agreeing</p> <p>22 to provide an opinion of its legal counsel to</p> <p>23 First Marblehead as part of the securitization</p> <p>24 process?</p> <p>25 A. I don't understand the question.</p>	<p style="text-align: right;">Page 97</p> <p>1 R. Neely</p> <p>2 Q. Do you recall whether or not TERI</p> <p>3 agreed to provide the opinion of its</p> <p>4 Massachusetts and federal law counsel to the</p> <p>5 other parties involved in the securitization</p> <p>6 process of the student loans?</p> <p>7 A. I wasn't involved in that.</p> <p>8 Q. So did First Marblehead's</p> <p>9 profitability depend on the profitability of</p> <p>10 the NCSLT trusts?</p> <p>11 A. I think that's a subjective</p> <p>12 question or opinionated question.</p> <p>13 Q. Did First Marblehead's</p> <p>14 profitability depend, again after 2001, depend</p> <p>15 on the securitization of these loans, these</p> <p>16 student loans?</p> <p>17 A. I would say yes.</p> <p>18 Q. And student loan asset-backed</p> <p>19 securitizations, were they historically First</p> <p>20 Marblehead's sole source of financing for its</p> <p>21 clients, student loan programs?</p> <p>22 MR. CASAMENTO: Objection to form.</p> <p>23 You can answer if you understand the</p> <p>24 question.</p> <p>25 MR. FIALKOW: You can answer if</p>

<p style="text-align: right;">Page 98</p> <p>1 R. Neely</p> <p>2 you understand.</p> <p>3 A. Yeah, I'm not sure -- I don't</p> <p>4 understand the question.</p> <p>5 Q. The student loan asset-backed</p> <p>6 securitizations, were they historically a</p> <p>7 principal part of First Marblehead's financing,</p> <p>8 revenues?</p> <p>9 A. Yes.</p> <p>10 Q. What percentage of First</p> <p>11 Marblehead's finances -- excuse me, revenues?</p> <p>12 A. Yeah, I don't recall.</p> <p>13 Q. Was it greater than 50 percent?</p> <p>14 A. What time period?</p> <p>15 Q. Let's say at any time after you --</p> <p>16 not you, but after TERI and First Marblehead</p> <p>17 did their transaction.</p> <p>18 A. For approximately six to seven</p> <p>19 years, it was the primary source of revenue.</p> <p>20 Q. And was TERI an integral part of</p> <p>21 that?</p> <p>22 A. I don't know what that means.</p> <p>23 MR. CASAMENTO: Can you ask him to</p> <p>24 define what six- to seven-year period</p> <p>25 he's talking about?</p>	<p style="text-align: right;">Page 99</p> <p>1 R. Neely</p> <p>2 A. Yeah, six- to seven-year period</p> <p>3 from 2001 to about September 2007, the question</p> <p>4 I believe was securitization-related revenues.</p> <p>5 And that was a primary source of revenue.</p> <p>6 Q. To First Marblehead?</p> <p>7 A. To First Marblehead.</p> <p>8 Q. And was TERI's guarantee of the</p> <p>9 loans important to the securitization process?</p> <p>10 A. Well, this is an opinion. I would</p> <p>11 say yes.</p> <p>12 Q. Okay. Why so?</p> <p>13 A. Because it provided a reserve fund</p> <p>14 to help pay for defaults.</p> <p>15 Q. Did TERI's guarantee of the loans</p> <p>16 that were securitized also make the trusts more</p> <p>17 attractive to investors?</p> <p>18 A. I can't speak to that.</p> <p>19 Q. When First Marblehead -- strike</p> <p>20 the question.</p> <p>21 Could you tell me what role First</p> <p>22 Marblehead had in marketing the NCSLT trusts to</p> <p>23 investors?</p> <p>24 A. To my knowledge, First Marblehead</p> <p>25 worked with an investment banker to work on the</p>
<p style="text-align: right;">Page 100</p> <p>1 R. Neely</p> <p>2 trusts.</p> <p>3 Q. To your knowledge did whoever was</p> <p>4 marketing the trusts to the investors stress</p> <p>5 the fact that TERI had guaranteed the loans</p> <p>6 that were placed into the trusts?</p> <p>7 MR. FIALKOW: Objection.</p> <p>8 A. I was not present.</p> <p>9 Q. Was TERI's guarantee of the loans</p> <p>10 an important factor to you when you were</p> <p>11 working for First Marblehead?</p> <p>12 A. Was it an important factor to me?</p> <p>13 Q. Yes.</p> <p>14 A. I'm not sure what that means.</p> <p>15 Q. Terrible question.</p> <p>16 Was TERI's guarantee of the loans</p> <p>17 between 2001 and 2007 an important thing for</p> <p>18 First Marblehead?</p> <p>19 A. I believe the answer is yes.</p> <p>20 Q. And was TERI's guarantee of the</p> <p>21 loans between 2001 and 2007 an important thing</p> <p>22 for the NCSLT trusts?</p> <p>23 A. I was not in the capital markets</p> <p>24 group, and I don't know how they considered</p> <p>25 that.</p>	<p style="text-align: right;">Page 101</p> <p>1 R. Neely</p> <p>2 Q. Did First Marblehead Corporation</p> <p>3 profit from TERI's guarantee of the loans?</p> <p>4 A. I don't know how to answer that</p> <p>5 question.</p> <p>6 Q. Let me try to break it down.</p> <p>7 Did First Marblehead Corporation</p> <p>8 earn revenues by way of TERI's guarantee of the</p> <p>9 loans?</p> <p>10 A. I do not understand the math.</p> <p>11 Q. I'm sorry?</p> <p>12 A. I don't understand the math.</p> <p>13 Q. Did TERI's guarantee of the loans</p> <p>14 help First Marblehead market the NCSLT trusts?</p> <p>15 A. Again, I was not in the capital</p> <p>16 markets group, so I don't know what the</p> <p>17 presentations were.</p> <p>18 Q. But to your knowledge did first --</p> <p>19 excuse me -- TERI's guarantee of the loans</p> <p>20 assist with First Marblehead marketing the</p> <p>21 NCSLT trust due to --</p> <p>22 MR. FIALKOW: I think he's</p> <p>23 answered that question like three times</p> <p>24 now.</p> <p>25 A. I never attended any investment</p>

<p style="text-align: right;">Page 126</p> <p>1 R. Neely</p> <p>2 A. Yes.</p> <p>3 Q. And after that transitional period</p> <p>4 ended, the fees that TERI was paying to First</p> <p>5 Marblehead ended ultimately?</p> <p>6 A. And after the transition period.</p> <p>7 Q. How did that --</p> <p>8 A. The transition period, just to be</p> <p>9 clear, included not only the disbursement but</p> <p>10 related type services that were being phased,</p> <p>11 you know, curtailed.</p> <p>12 Q. After the transition period ended</p> <p>13 and all of the fees that TERI was paying to</p> <p>14 First Marblehead stopped being paid, how did</p> <p>15 that affect First Marblehead's revenue?</p> <p>16 A. Well, there was less revenue.</p> <p>17 Q. How much less revenue?</p> <p>18 A. I don't recall.</p> <p>19 Q. Was it -- it's sort of a strange</p> <p>20 word, not strange -- but was it a substantial</p> <p>21 decrease in revenue to First Marblehead?</p> <p>22 A. What's the definition of</p> <p>23 "substantial"?</p> <p>24 Q. Was it, I don't know, less than 50</p> <p>25 percent? More than 50 percent?</p>	<p style="text-align: right;">Page 127</p> <p>1 R. Neely</p> <p>2 A. I can't answer that in</p> <p>3 percentages.</p> <p>4 Q. Do you recall amounts?</p> <p>5 A. After the bankruptcy, the</p> <p>6 elimination of the revenue was greater than</p> <p>7 50 million.</p> <p>8 Q. Excuse me for one second.</p> <p>9 (Pause)</p> <p>10 Q. Do you recall what the highest</p> <p>11 amount of revenue between 2001 and 2007 that</p> <p>12 First Marblehead made from the processing fees?</p> <p>13 A. Annually is your question?</p> <p>14 Q. Yes. The highest amount.</p> <p>15 A. Received not made?</p> <p>16 Q. Received.</p> <p>17 A. There were I believe, as I recall,</p> <p>18 it exceeded \$100 million. It may have been 100</p> <p>19 to 125 million. May have been. Per year.</p> <p>20 Q. May have been?</p> <p>21 A. May have been.</p> <p>22 Q. Sir, I may have asked you this</p> <p>23 earlier, but prior to the 2001 transaction, how</p> <p>24 many employees did TERI have all together?</p> <p>25 A. It was 200, I think, as I recall.</p>
<p style="text-align: right;">Page 128</p> <p>1 R. Neely</p> <p>2 Q. And after the transaction did TERI</p> <p>3 have any employees?</p> <p>4 A. 50.</p> <p>5 Q. The one hundred and --</p> <p>6 A. Approximately 50.</p> <p>7 Q. The difference is about 150. What</p> <p>8 happened to those employees?</p> <p>9 A. Those 150 employees were part of</p> <p>10 the transaction. They were part of the asset</p> <p>11 sale.</p> <p>12 Q. Did they actually then become</p> <p>13 employees of First Marblehead or First</p> <p>14 Marblehead Education Resources?</p> <p>15 A. First Marblehead Education</p> <p>16 Resources.</p> <p>17 Q. So their employment status was</p> <p>18 changed from TERI to FMER.</p> <p>19 A. Correct.</p> <p>20 Q. Prior to the transaction, TERI was</p> <p>21 paying, for example, payroll taxes on those</p> <p>22 employees?</p> <p>23 A. Yes.</p> <p>24 Q. And after the transaction, FMER</p> <p>25 was paying payroll taxes on those employees?</p>	<p style="text-align: right;">Page 129</p> <p>1 R. Neely</p> <p>2 A. Yes.</p> <p>3 Q. Before the transaction, was TERI</p> <p>4 offering health insurance to these employees?</p> <p>5 A. Yes.</p> <p>6 Q. And what about after the</p> <p>7 transaction?</p> <p>8 A. Yes.</p> <p>9 Q. TERI continued to pay --</p> <p>10 A. No. FMER.</p> <p>11 Q. FMER, okay. Were there any</p> <p>12 overlaps in the benefits plans between First</p> <p>13 Marblehead and FMER?</p> <p>14 A. I don't understand the question.</p> <p>15 Q. Did TERI pay Workers' Compensation</p> <p>16 insurance for the employees, the 150 employees,</p> <p>17 before the transaction?</p> <p>18 A. Yes.</p> <p>19 Q. And after the transaction, who</p> <p>20 paid the Workers' Comp insurance?</p> <p>21 A. First Marblehead.</p> <p>22 Q. First Marblehead had a pension</p> <p>23 plan in 2001?</p> <p>24 A. Which entity?</p> <p>25 Q. I think it might have been The</p>